



## MILPITAS PLANNING COMMISSION STAFF REPORT

July 23, 2014

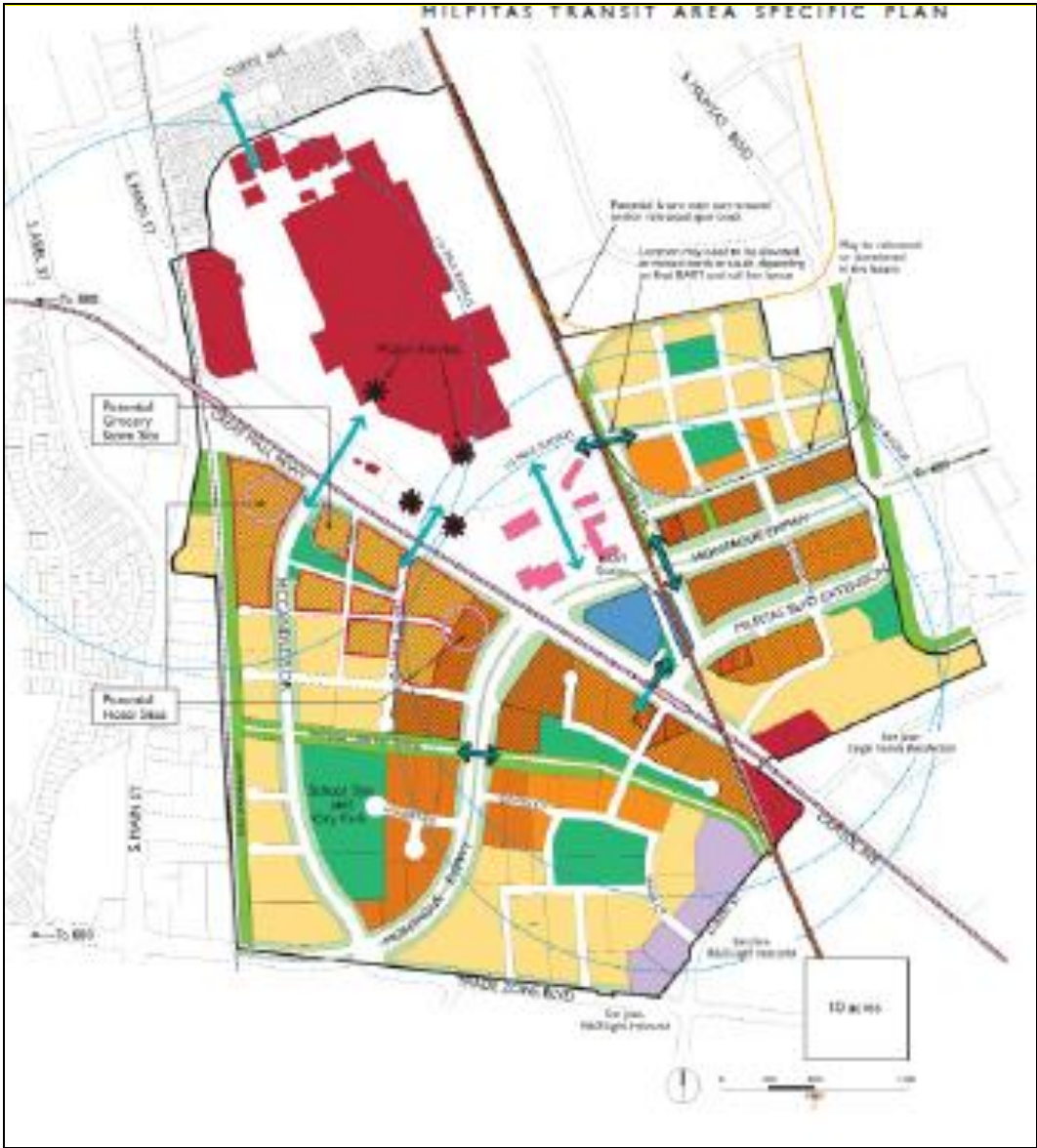
---

<b>APPLICATION:</b>	<b>Sunset Provision Zoning Text Amendment, ZA14-0008</b> A request to consider a Zoning Text Amendment to Section XI-10-56-03.B(2), Non-Conforming Uses of Buildings and Structures, to re-instate the June 16, 2014 sunset date to June 16, 2016 for the re-establishment of discontinued non-conforming uses within the Midtown and Transit Area Specific Plan areas.
<b>RECOMMENDATION:</b>	<b>Staff recommends that the Planning Commission:</b> <b>Adopt Resolution No. 14-030 recommending the City Council approve Zoning Text Amendment No. ZA14-0008</b> to extend the sunset date from June 16, 2014 to June 16, 2016 for the re-establishment of discontinued non-conforming uses within the Midtown and Transit Area Specific Plan areas.
<b>LOCATION:</b> Area of City:	Midtown and Transit Area Specific Plan Areas Only
<b>PEOPLE:</b> Project Applicant: Property Owner: Project Planner:	Michael Fletcher, Centerpointe Associates, LP Same as applicant Scott Ruhland, Senior Planner
<b>LAND USE:</b> General Plan Designation: Zoning District:	Various, Midtown and Transit Area Specific Plan areas Various, Midtown and Transit Area Specific Plan areas
<b>ENVIRONMENTAL:</b>	Categorically Exempt from further environmental review pursuant to Section 15061(b)(3) of the CEQA Guidelines in that the project has no potential to cause a significant effect on the environment.

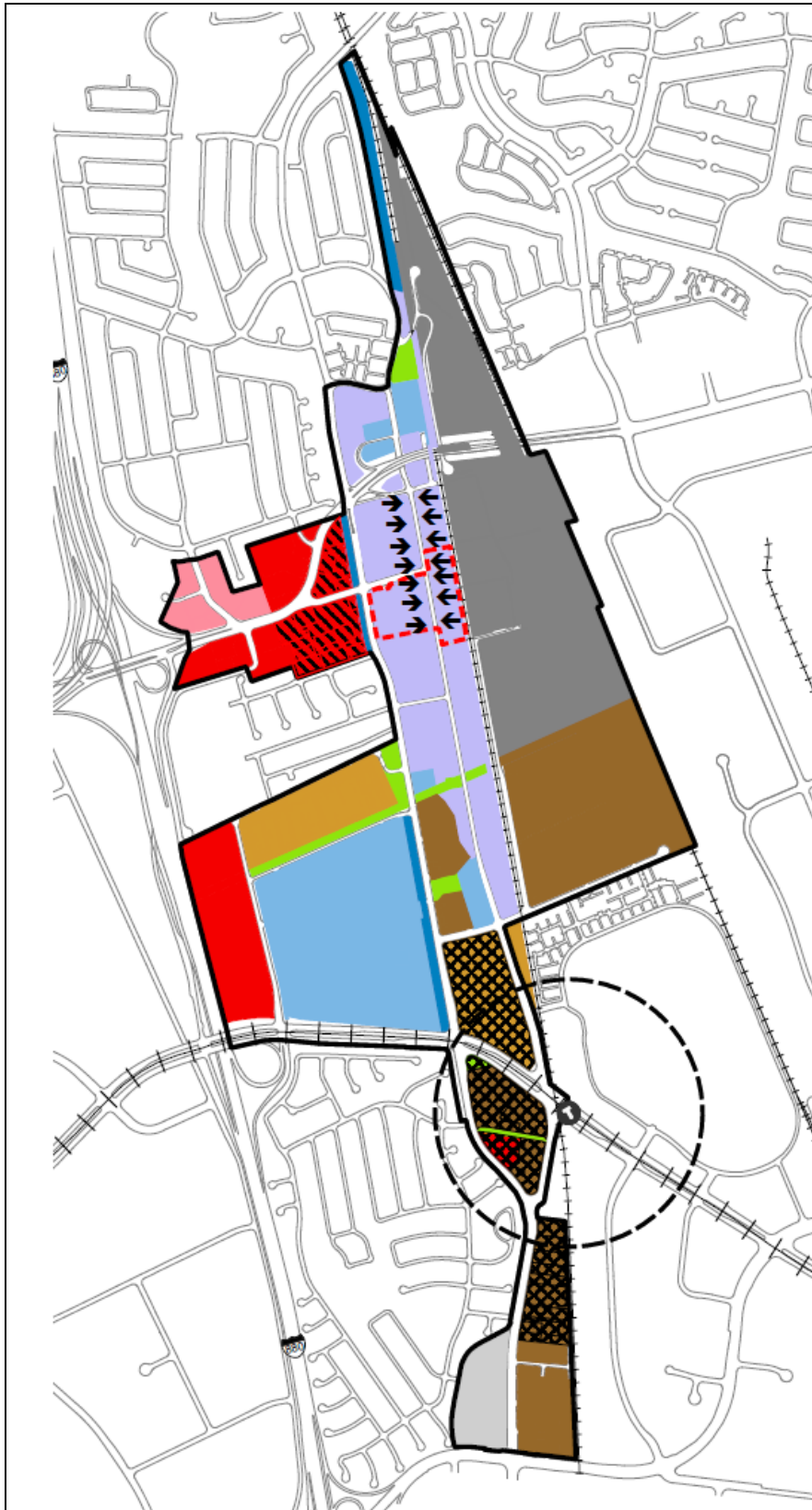
### EXECUTIVE SUMMARY

The Non-Conforming Buildings and Uses section of the Zoning Code contains a provision for allowing the re-establishment of discontinued uses in the Specific Plan areas that cease operation for one year or more. The provision also includes an inoperative date of June 16, 2014 that nullifies said provision and effectively eliminates the possibility for re-establishment. The purpose of the inoperative date is to transition incompatible uses once they cease operation from industrial office development to new residential neighborhoods. However, an application was received on May 20, 2014 for a Zoning Text Amendment to extend this date to June 16, 2016. Staff supports the extension of this date to more closely coincide with the BART station opening; and to allow re-establishment of uses for two (2) more years, under certain findings, to promote economic development.

### Transit Area Specific Plan Area



## Midtown Specific Plan Area



## BACKGROUND

---

### *History*

On October 27, 2010, the Planning Commission directed staff to draft a zoning text amendment to provide flexible provisions for non-conforming uses in the Specific Plan areas, given the current state of the economy, resulting in long term vacancies and unique constraints that impact redevelopment and eventual conformance of these sites. Many properties and businesses in the Midtown and Transit Areas became non-conforming with adoption of the specific plans in 2002 and 2008 respectfully. This section of the Zoning Code was eventually amended and adopted on May 17, 2011. The amendment created the language to create this provision, and the inoperative date determining when the provision is nullified was set as June 16, 2014.

### *The Application*

The following is a summary of the applicant's request:

- *Zoning Amendment:* Amend Section XI-10 56-03.B(2), Non-Conforming Uses of Buildings and Structures, to extend the inoperative date from June 16, 2014 to June 16, 2016 for the re-establishment of discontinued non-conforming uses within the Midtown and Transit Area Specific Plan areas.

## PROJECT DESCRIPTION

---

### *Overview*

The project involves a minor zoning text amendment to adjust the inoperative date of the sunset provision from June 16, 2014 to June 16, 2016. This will allow the re-establishment of discontinued uses of one year or more in the City's specific plan areas, under certain findings, for approximately two more years.

The original purpose of this provision of the non-conforming use section of the Zoning Code is to establish criteria and a process to allow for the re-establishment of nonconforming uses within the Midtown and Transit Area Specific Plan under certain circumstances. Through this provision a nonconforming use that was discontinued for a year or more in the Midtown and Transit Area may re-establish provided the proposed re-establishment would not create a nuisance to the surrounding properties, would be compatible with the general character of the surrounding neighborhood or district, contribute the economic vitality of the district until the site can be permanently converted to conforming uses. The underlying purpose of the provision is to allow light industrial and office uses in this area to continue and re-establish until such time the properties are redeveloped consistent with the Midtown or Transit Area Specific Plans.

The original inoperative date of the provision was June 16, 2014; however, an application was filed by a private entity to extend that date for two more years. Staff supports this extension given the long-term development program of the Midtown and Transit Areas. And in particular, in the Transit Area, since it will more closely align with the opening of the BART Station which is anticipated in 2017.

### ***Location and Context***

The location of this request only pertains to the Midtown and Transit Area Specific Plan areas. Vicinity and location maps of the subject site location are included on page two.

## **PROJECT ANALYSIS**

---

### ***General Plan and Zoning Conformance***

The project conforms to the General Plan in the sense it promotes economic development for local business and business enterprise. It also allows the continuation of economic pursuits to strengthen and promote stability and balance in the Specific Plan areas. In this sense it is better to have business and industry occupying building space rather than the space remain vacant. It also promotes land use compatibility by grouping like uses in the same area rather than dispersing them.

The text amendment is also consistent with the Midtown and Transit Area Specific Plans which acknowledge existing uses in place and continuation of those uses even after properties were rezoned.

The text amendment is also internally consistent with other sections of the Zoning Code since the inoperative date extension is specific to Section XI-10-56.03(B)(2) only. The remaining portion of the Nonconforming Buildings and Uses section of the code remains relevant and enforceable.

## **FINDINGS FOR APPROVAL**

---

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

### ***1. The proposed amendment is consistent with the General Plan.***

The proposed amendment is consistent with the General Plan because it allows the continuation of economic pursuits to strengthen and promote stability and balance in the Specific Plan areas. It's consistent with the following General Plan policies:

- Land Use Policy 2.a-I-3 - Encourage economic pursuits which will strengthen and promote development through stability and balance.
- Land Use Policy 2.a-I-4 - Publicize the position of Milpitas as a place to carry on compatible industrial and commercial activities with special emphasis directed toward the advantages of the City's location to both industrial and commercial use.
- Land Use Policy 2.a-I-5 - Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints.

2. *The proposed amendment will not adversely affect the public health, safety and welfare.*

The proposed amendment is consistent with this finding because it extends the inoperative date of this provision for two years. However, in order to re-establish discontinued uses certain findings are still required. Those findings ensure land use compatibility and the re-establishment of uses will not adversely affect the public health, safety and welfare of the community.

---

## **ENVIRONMENTAL REVIEW**

The Planning Division conducted an environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). The project is exempt from further CEQA review under Section 15061(b)(3) of the CEQA Guidelines in that the project has no potential to cause a significant effect on the environment because the amendment only extends the date for which discontinued non-conforming uses may be re-established.

---

## **PUBLIC COMMENT/OUTREACH**

Staff provided public notice the application in accordance with City and State public noticing requirements. At the time of writing this report, there have been no inquiries from the public. A notice was published in the Milpitas Post on July 11, 2014. (Two Fridays before the meeting) A public notice was also provided on the City's Website, [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov), and posted at City Hall.

---

## **CITY COUNCIL REVIEW**

This project requires review by the City Council and is tentatively scheduled on the August 19, 2014 City Council agenda.

---

## **CONCLUSION**

In conclusion, staff supports extension of the inoperative date for the re-establishment of discontinued uses within the Midtown and Transit Specific Plan areas from June 16, 2014 to June 16, 2016 for the reasons enumerated in the staff report.

---

## **RECOMMENDATION**

STAFF RECOMMENDS THAT the Planning Commission:

1. Conduct a Public Hearing; and
2. Adopt Resolution 14-030 recommending the City Council to approve Zoning Text Amendment No. ZA14-0008 extending the inoperative date for the sunset provision for the re-establishment of discontinued non-conforming uses within the Midtown and Transit Area Specific Plan areas from June 14, 2014 to June 14, 2016.

---

## **ATTACHMENTS**

A: Resolution No. 14-030

B: Ordinance No. 38.817